IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.498 OF 2007.

Shri Pravin Niwritti Sawant
R/o 12/718, Satpute Chawl,
Ichalkaranji-416115
Dist. Kolhapur. ..Petitioner
V/s

1. Hon'ble Shri J.B.Anandgaonkar
Saheb, Ex. J.M.F.C., Ichalkaranji.

2 Hon'ble Shri G.G. Bhansali Saheb,
Ex. J.M.F.C. Ichalkaranji.

3. Hon'ble Sou. P.P. Kulkarni Madam,
5th Ad-hoc Asstt. Sessions Judge,
Kolhapur.

4. The State of Maharashtra ..Respondents.

Mr.S.V. Marwadi, Advocate appointed for the Petitioner No.1, who is in jail.

Mr.D.P.Adsule, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 23RD APRIL, 2007.

ORAL JUDGMENT

. Mr. Marwadi, learned Advocate appointed on behalf of the petitioner seeks leave to implead the State of Maharashtra, as respondent No.4. Leave granted. Amendment be effected immediately.

2. Rule. Rule made returnable forthwith. With consent of the Counsel for both the parties, the matter is taken up for final hearing immediately.

3. To state in brief, the wife and minor children of the present petitioner had filed Criminal Misc. Application No. 130/1997 under Section 125 of Cr.P.C. for maintenance before the J.M.F.C., Ichalkarnji. The application was contested by the petitioner. After hearing the parties, respondent No.1 Mr. J.B. Anandgaonkar, the then J.M.F.C., passed the order dated 14/11/1997 allowing the maintenance application. That order was challenged by the petitioner in Criminal Revision Application No.222/1997 before the Sessions Court, Kolhapur contending that the learned Magistrate had not made proper inquiry about the various aspects. That revision application was allowed by order dated 16/1/2001 and the maintenance application was remanded back to the J.M.F.C., Ichalkaranji for fresh inquiry. After fresh inquiry respondent No.2 Mr.G.G. Bhansali passed the order dated 4/4/2003 granting maintenance to the wife and the children. That order was again challenged by the petitioner in Revision Application No.148/2003, which was rejected by the respondent No.3

Smt. P.P. Kulkarni by the judgment dated 17/8/2004.

4. The petitioner filed a complaint against respondent Nos. 1 to 3 for the offence punishable under sections 219 and 220 of I.P.C. in the Court of J.M.F.C., Ichalkaranji on 24/11/2004, which was registered as M.A. Application No. 312/2004 and the matter was put up for arguments on the point of maintainability of such a complaint. By the order dated 5/2/2005, the learned J.M.F.C., Ichalkaranji rejected that complaint, holding that all the three respondents had passed the orders from time to time, while acting in the discharge of the official duties as Judicial Magistrates or as Additional Sessions Judge and in view of the provisions of Section 3 of the Judges (Protection) Act , 1985, no Court shall entertain or continue any civil or criminal proceedings against Judicial Officer for any act done by them in the course of acting or purporting to act in the discharge of their official duties or functions. That order was challenged by the present petitioner in Criminal Revision Application No.201/20005, under section 397 Cr.P.C. before the Sessions Court, Kolhapur. Written notes of arguments were also submitted by him in support of his contentions that all these three Judicial

Officers had not considered the facts, oral and documentary evidence and the circumstances and had wrongly passed the orders in favour of his wife. After hearing the petitioner and after going through the relevant provisions of law, the learned Additional Sessions Judge, Ichalkaranji, dismissed the Revision Application with costs of Rs.5000/-. The petitioner has filed this writ petition challenging the dismissal of his complaint by the Courts below.

5. At the outset it may be stated that I did not find it necessary to issue notice to the respondent Nos. 1 to 3, who had passed the orders while discharging their functions, as Judicial Officers. Heard Mr. Marwadi learned Advocate appointed for the petitioner and Mr. Adsule, APP.

6. From the facts leading to filing of the complaint, as stated above, it is clear that none of the three respondents had done any act in their personal capacity. The orders which were passed by them were strictly in the discharge of their official duties and functions. Where a Judicial Officer has committed any error in appreciating the facts and the oral and

documentary evidence before passing the order, that order can be challenged as per the provisions of law and the appellate or revisional authority can consider the judgment and order passed by the concerned Judicial Officer and may come to its own conclusion. While doing so, the appellate or revisional authority may either maintain the order passed by the subordinate Court or may set aside, reverse or modify that order. It is material to note that in the complaint filed by the petitioner against respondent Nos. 1 to 3, there was no allegation of any corruption or malpractice on the part of any of them. Only allegation was that they had not considered the evidence oral as well as documentary, and had committed an error in passing the order of maintenance in favour of the wife. As pointed out above, the first order was passed by respondent No.1. However, that order was set aside by the Additional Sessions Judge in Revision Application No.222/1997 and the matter was remanded back to the trial Court. After remand respondent No.2, while discharging his duties, as Judicial officer, considered the evidence led by both the parties and passed the order of the maintenance against the petitioner. That order was also challenged by the petitioner in Revision Application No. 148/2003

and after hearing the parties that revision application was dismissed by the respondent No.3, while discharging her duties as revisional authority. From this it is clear that each of them had passed the orders while discharging their official duties as Judicial Officers.

7. Section 219 and 220 of Indian Penal Code read as follows:-

> *"S.219. Public servant in judicial proceeding corruptly making report, etc., contrary to law.- Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding, any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*
>
> *S.220. Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.-Whoever, being in any office which gives him legal authority to commit persons for trial or to commitment, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."*

From the language of section 219 IPC, it is clear that when any public servant corruptly or maliciously makes

or pronounces in any stage of judicial proceeding any report , order, verdict or decision which he knows to be contrary to law, shall be punished. From this it is clear that the public servant must have acted corruptly or maliciously, while passing or making any order or judgment and he should have know legal that the said order or judgment was contrary to law. In the present case, there is no allegation that any of the three respondents had passed concerned orders corruptly or maliciously or knowing that they were contrary to law. In judicial proceedings possibility of committing error cannot be ruled out and therefore, law provides for appeal or the revision against such orders, so that the appellate or revisional authority may look into the matter and if any mistake is committed, it may be rectified. Merely because the first order passed by the respondent No.1 was set aside in the revision filed by the petitioner, it cannot be inferred that respondent No.1 had acted corruptly or maliciously and that too knowing that it was contrary to law. As far as, order passed by the respondent Nos.2 and 3 are concerned, it is clear that order passed by respondent No.2 was challenged as per the provisions of section 397 Cr.P.C. in revision application and respondent No.3 while

discharging the functions of the revisional authority had come to the conclusion that the order was correct and therefore, the revision applications was rejected. If still the petitioner was not satisfied, he could challenge that order by way of filing a writ petition because second revision is not allowed by the law. No such writ petition was filed and thus, the orders passed by the respondent No.2 and then respondent No.3 had become final.

8. The offence under section 220 of I.P.C. is also committed only when a person, being in office, which gives him legal authority to commit persons for trial or to keep persons in confinement, corruptly or maliciously commits any person for trial or confinement or keeps any person in confinement, in exercise of that authority knowing that in so doing he is acting contrary to law. Therefore, under section 220 IPC also it is necessary to establish that the officer, who committed any person for trial or to confinement, must have acted corruptly or malicious and knowing that he was doing that act contrary to law. In absence of these conditions and circumstances, a person cannot be held guilty under section 220 of IPC, merely because he has confined or

committed any person to confinement in exercise of the authority given to him under the law. In view of the facts of the present case, there is nothing to show that the offence under section 219 and 220 of IPC were committed by any of the respondent Nos. 1 to 3.

9. Provisions of Section 197 Cr.P.C. and the provisions of section 3 of the Judges (Protection) Act, 1985 was relevant in the present case. These two provisions provide certain protection to the Judicial Officers. Section 197(1) Cr.P.C. reads as follows:-

> *"197. Prosecution of Judges and public servants.- (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-*
>
> *(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;*
>
> *(b) in the case of a person who is employed or, as the case may be was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government. ....."*

In view of this provision, it is clear that when any person, who is or was a Judge or Magistrate, is accused for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the concerned Government. This protection is given to the Judges and Judicial Magistrate like other public servant who cannot be removed from the office save by or with the sanction of the concerned Government. These provisions came for consideration before the Supreme Court from time to time In **Prabhakar V. Sinari Vs. Shanker Anant Verlekar, AIR 1969 S.C. 686"**, the Supreme Court observed as follows in para 5.

> *"The language of Section 197 Criminal P.C. clearly is that no Court can take cognizance of an offence alleged to have been committed by any person belonging to the categories mentioned in the section which would include the appellant when he is accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. This Court observed in Ronald Wood Mathams V. State of West Bengal, 1955-I SCR 216= (AIR 1954 SC 455) that the question whether sanction under section 197 was necessary for instituting proceedings on charges of conspiracy and of bribery stood concluded by the decisions of the*

Judicial Committee in II, H. B. Gill V. The King. 76 Ind App 41= (ARI 1949 P.C. 159) and Phanindra Chandra Neogy V.The King. 76 Ind App 10= (AIR 1949 PC117) and must be answered in the negative, so far as the appellant in that case was concerned. After a full discussion of the case law the result was stated in Matajog Dubey V. H. C. Bhari, 1955-2 SCR 925 at P.934=(ARI 1956 SC 44 at p. 49) thus:

"There must be a reasonable connection between the act and the discharge of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did in the course of the performance of his duty."

At an earlier stage it had been observed that it did not matter if the acts exceeded were strictly necessary for the discharge of the duty. What had to be found out was whether the act and the official duty were so interrelated that one could postulate reasonably that it was done by the accused in the performance of the official duty though possibly in excess of the need and requirements of the situation. In Amrik Singh V. State of Pepsu, 1955-ISCR 1302= (AIR 1955 SC 309) Venkatarama Iyer J. speaking for the Court summed up the result of the various decisions on the subject and said that it was not every offence committed by a public servant which required sanction for prosecution under Section 197(1) of the Code of Criminal Procedure nor even every act done by him while he was actually engaged in the performance of his official duties. But, if the act complained of was directly connected with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary and that would be so, irrespective of whether it was in fact, a proper discharge of his duties or not."

10. In **State of Orisa V. Ganesh chandra Jew, AIR**

2004 S.C. 2179, in paras 10, 11 and 12 of the Judgment, after referring to the provisions of section 197 Their Lordships observed as follows;-

> *"10.-The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. For instance no prosecution can be initiated in a Court of Sessions under section 193, as it cannot take cognizance, as a Court of original jurisdiction, of any offence unless the case has been committed to it by a Magistrate or the Code expressly provides for it. And the jurisdiction of a Magistrate to take cognizance of any offence is provided by Section 190 of the Code, either on receipt of a complaint, or upon a police report or upon information received from any person other than police officer, or upon his knowledge that such offence has been committed. So far public servants are concerned the cognizance of any offence, by any Court, is barred by section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. The mandatory character of the protection afforded to a public servant is brought out by the expression, "no Court shall take cognizance of such offence except with the previous sanction". Use of the words, "no" and "shall" make it abundantly clear that the bar on the exercise of power of the Court to take cognizance of any offence is absolute and complete. Very cognizance is barred. That is the complaint, cannot be taken notice of. According to Black's Law Dictionary the work*

'cognizance' means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. A Court, therefore, is precluded from entertaining a complaint or taking notice of it or exercise jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have committed during discharge of his official duty.

11.-Such being the nature of the provisions the question is how should the expression,"any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty", be understood? What does it mean? "Official" according to dictionary, means pertaining to an office, and official act or official duty means an act or duty done by an officer in his official capacity. In B. Saha and others V. M.S. Kochar (1979 (4) SCC 177), it was held; (SCC PP 184-85, para 17): AIR 1979 SC 1841 :1979 CRI L.J. 1367, para 18

"*The words 'any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty' employed in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. If these words are construed too narrowly, the section will be rendered altogether sterile, for, ' it is no part of an official duty to commit an offence, and never can be'. In the wide sense, these words will take under their umbrella every act constituting an offence, committed in the course of the same transaction in which the official duty is performed or purports to be performed. The right approach to the import of these words lies between two extremes. While on the one hand, it is not every offence committed by a public servant while engaged in the performance of his official duty, which is entitled to the protection of Section 197(1), an Act constituting an offence, directly and reasonably connected with his official duty will require sanction for prosecution and the said*

provision." Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The Section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

12. It has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is under the colour of office. Official duty therefore implies that the act or omission must have been done by the public servant in course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The Section has, thus to be construed strictly, while determined its applicability to any act or omission in course of service. Its operation has to be limited to those duties which are discharged in course of duty. But once any act or omission has been found to have been committed by a public servant in discharge of his duty then it must be given liberal and wide construction so far its official nature is concerned. For instance a public servant is not entitled to indulge in criminal activities. To that extent the Section has to be construed narrowly and in a restricted manner. But once it is established that act or omission was done by the public servant while discharging his duty then the scope of its being official should be construed so as to advance the objective of the Section in favour of the public servant. Otherwise the entire purpose of affording protection to a public servant without sanction shall stand frustrated. For instance a police officer in discharge of duty may have to use force which may be an offence for the prosecution of which the sanction may be necessary. But if the same officer commits an act in course of service but not in discharge of his duty and without any justification therefor

then the bar under Section 197 of the Code is not attracted."

In view of the above observations, it is clear that when it is established that act or omission was done in discharge of official duty the protection under section 197 is available and no Court can take cognizance without prior sanction of the Government concerned. In the present case, there is no doubt that respondent Nos. 1 to 3 had passed the concerned orders while discharging their official duties. There was no personal involvement in any of the matters. They heard the evidence led by the parties and after hearing the same they had passed the orders and as pointed out above the orders passed by the respondent No. 2 and 3 have become final under the law and they are not disturbed, set aside or reversed by any superior authority. In view of this, without the prior sanction under section 197 Cr.P.C., the Magistrate could not take cognizance of complaint lodged by the petitioner against respondent Nos. 1 to 3.

11. Besides the protection given by section 197 (1) Cr.P.C. to the Judges, Magistrates and other public

servants who could not be removed from their office save by or with the consent of the concerned Government, additional protection was given to the Judicial Officers by the Judges (Protection) Act, 1985 (the 'Act' in brief) Section 2 of the 'Act' defines "Judge" as follows:-

> "*The Judge means not only every person who is officially designated as a Judge, but also every person who is empowered by law to give in any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive or who is one of a body of persons which body of persons is empowered by law to give such a judgment.*"

While respondent No.3 was designated as a Judge, respondent Nos. 1 and 2 were designed as Judicial Magistrate F.C. In view of the provisions of Cr.P.C., each of them had powers to hear the parties and pass a judgment or order, including an order granting maintenance to the wife or children and that judgment or order would be definitive, only subject to appeal or revision under Cr.P.C. Besides this, every Judicial Magistrate First Class is also a Civil Judge, Junior Division or Senior Division, by virtue of his appointment in Judicial Service. Therefore, Judicial

Magistrate F.C. is covered within the definition of "Judge" under section 2 of the Judges (Protection) Act, 1985.

12. Sections 3 and 4 of the Judges (Protection) Act, 1985 reads as follows:-

> *"S.3 Additional Protection to Judges.- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function.*
>
> *"(2).- Nothing in sub-section (1) shall debar or affect in any manner the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal, or departmental proceedings or otherwise) against any person who is or was a Judge.*
>
> *"S.4.- The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force providing for protection of Judges."*

In view of the title of Section 3 of the ‘Act’ and in view of specific provisions of Section 4 of the ‘Act’,

it is clear that the protection given under Section 3 is in addition to and not in derogation of the provisions of any other law for the time being in force providing for protection of Judge. Certain protection against prosecution without prior sanction is provided by Section 197 Cr.P.C. From the language of Section 3 (1) of the 'Act', it is clear that subject to the provisions of sub-section (2), no court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge for any act, thing or word committed, done or spoken by him when or in the course of, acting or purporting to act in the discharge of his official duty or function. Thus sub-section (1) of section 3 provides complete protection against any civil or criminal proceeding against a Judge for any act done by him in the discharge of his official or judicial functions only subject to sub-section (2) of section 3. In view of the complete protection under section (3)(1) of the 'Act', no person who is or who was a Judge can be prosecuted for any act or thing done by him in discharge his official or judicial functions. In view of this protection, on the basis of the complaint made by the complainant cognizance could not be taken by any Magistrate.

13. Taking into consideration the facts and legal position discussed above, I find that the learned J.M.F.C. was right in refusing to take cognizance on the complaint made by the petitioner and the learned Additional Sessions Judge was also right in dismissing the revision application. The learned Additional Sessions Judge directed the petitioner to pay costs of Rs. 5000/- in view of his conduct in filing the complaint against the Judicial officer in respect of judicial orders passed by them. The learned Additional Sessions Judge has also observed that the petitioner had not only made the complaint against the Judicial Officers but he had also made the allegations against several advocates, who were appointed by him from time to time, for not performing their duties in proper manner. The learned Additional Sessions Judge noted as follows:-

> *"This conduct of the complainant indicates that for the decision of judicial officers against the complainant in C.M.A. No. 130/1997 and subsequent revision applications, the complainant is blaming the then judicial officers as well as his own advocates. If such wild allegations of the complainant against the judicial officers in respect of orders passed by*

> *them in judicial proceedings are tolerated and accepted, then judicial officer will be compelled to stand in the Court as accused persons. Therefore, the practice adopted by the complainant of filing criminal complaint against the judicial officers in respect of the judicial orders passed by them, must be deprecated. This conduct of the complainant should not be taken lightly and while dismissing this revision, heavy costs of Rs. 5000/- payable to the State deserves to be imposed against the complainant."*

These observations made by the learned Additional Sessions Judge are perfectly justified. Such practice of making wild allegations against judicial officers only because they had passed certain orders against the particular party needs to be deprecated strongly.

14. However, as far as amount of costs is concerned Mr. Marwadi pointed out that the petitioner appears to be a poor person. He could not pay the maintenance amount of his wife and the child and for not making the payment he was required to be sentenced to imprisonment. According to him in such circumstances, it may be difficult for the petitioner to pay the costs of Rs. 5000/- and it may be very difficult for the State to recover that costs from him. According to him the rejection of the petition with the above observations itself may be sufficient condemnation of his act. Mr.

Adsule, learned APP appearing for the State of Maharashtra has no objection if the amount of costs is reduced to such an extent that he may be in a position to pay the same. Taking into consideration all the circumstances, I find that this request made by Mr. Marwadi deserves to be considered sympathetically.

15. Writ Petition stands dismissed. However, the Impugned order passed by the Additional Sessions Judge to extent of payment of costs of Rs.5000/- is set aside and the petitioner is hereby warned to be more careful in future. Rule discharged accordingly.

(J.H.BHATIA, J)